

1 55, and we have no control over whether the
2 Office of General Counsel drop its objections
3 to appeals relating to that underlying
4 proceeding.

5 This was something that we've
6 explained to Mr. Waugh, as well as to
7 Preferred in the context of negotiations and
8 settlement of this case, and it was something
9 that we believed that Mr. Waugh understood was
10 before and since the time that he has made
11 that proposal in his July 8, 2009 letter.

12 JUDGE SIPPEL: Did you respond to
13 that letter? You, I mean, the Bureau. Did
14 the Bureau respond to that letter?

15 MS. SINGH: Yes, your Honor, we
16 responded through the telephone conversations
17 that I outlined for you just now.

18 JUDGE SIPPEL: But not in, not in
19 writing. You didn't -- there was no letter --
20 you didn't write a letter, you not -- the
21 Bureau did not a letter back to Mr. Silva
22 responding to the points that he raised.

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1 MS. SINGH: Yes. And, your Honor,

2 --

3 JUDGE SIPPEL: Yes, you did, or
4 yes,--you didn't?

5 MS. SINGH: Yes, your understanding
6 is correct. We did not write a letter because
7 as the parties are aware from our settlement
8 negotiations, for us to send out something
9 written requires several layers of approval.
10 And in order to expedite negotiations and to
11 move this proceeding along, we didn't want to
12 complicate things.

13 We received broad authority from
14 our client to negotiate settlement under terms
15 that we had already discussed beforehand. As
16 long as we stayed within the outlines of those
17 terms, we were able to have the authority to
18 negotiate settlement in this proceeding.

19 This is something we've explained
20 repeatedly to the parties and, and was the
21 reason why we never submitted anything written
22 in response to these counter proposals that

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1 were flying back-and-forth amongst them in
2 relation to their business negotiations, as
3 well as to the Bureau and to the parties in
4 this proceeding in regards to the settlement
5 negotiations taking place for this case.

6 JUDGE SIPPEL: All right. I think
7 -- well, I'm following what you're saying.

8 MS. SINGH: And, also, your Honor,
9 I might add that there was nothing that we
10 were aware of that required us to respond in
11 writing. We understand that the parties have
12 a preference for doing that and we appreciate
13 it, but we were cleared with them through
14 several telephone conversations and face-to-
15 face meetings as outlined for your Honor what
16 our position on various issues --

17 JUDGE SIPPEL: No, I just -- well,
18 I was only asking that question because I
19 wanted to make a note as to, you know, what
20 should I go to next when I return to my
21 office? I certainly want to read that letter
22 again, but is there a letter in response that

1 I also want to read? And I don't. Okay,
2 that's fine. That's all I was really looking
3 for.

4 MS. SINGH: Thank you, your Honor.

5 JUDGE SIPPEL: I don't, I don't
6 want to over, overpass Mr. Austin or Mr.
7 Guskey either, I mean, but -- let me have Mr.
8 Silva summarize it from his side and then --
9 what I'm interested in and -- one thing I am
10 interested in, I mean, I can understand Mr.
11 Waugh wants this interest.

12 Mr. Waugh also wants certain
13 objections to be dropped on a rebanding
14 proceeding, and something about a waiver, it's
15 going to have to go through the Wireless
16 Bureau. Where does Mr. Austin and where does
17 Guskey, where do they stand with respect to
18 those, those issues?

19 MS. SINGH: If I may, your Honor,
20 before they address these issues, I have the
21 letter in hand that I just referenced, and if
22 your Honor would like to refer to it during

1 the proceeding --

2 JUDGE SIPPEL: Do you have a copy
3 for me?

4 MS. SINGH: Yes, your Honor.

5 JUDGE SIPPEL: Can I -- that would
6 be fine. That would be nice. I didn't bring
7 the file --

8 MR. SILVA: What letter is this?
9 Is this my letter of July 8 to you?

10 MS. SINGH: Yes.

11 MR. SILVA: Okay.

12 MS. SINGH: Mr. Silva, if you'd
13 like to --

14 MR. SILVA: I have a copy.

15 MS. SINGH: Okay, thank you. This
16 is -- for the record, pages two to three of
17 the July 8, 2009 letter attached to Mr.
18 Waugh's settlement facts statement filed on
19 August 28, 2009.

20 JUDGE SIPPEL: All right. I know I
21 have it, but I didn't bring those piles of
22 papers down thinking that with what I want to

1 accomplish here is not a line-by-line replay
2 of, of what's transpired, but this is very
3 important what you did for me.

4 And now I'd like to hear -- let me
5 ask. What about that? Mr. Austin and Mr. --
6 before I move on, Mr. Guskey, what, what about
7 these rebanding proceedings and getting the
8 Wireless to, to act on a waiver and this type
9 of thing, Wireless Bureaus.

10 MR. GUSKEY: This is Mr. Guskey.
11 You know, as Ms. Singh described, they're very
12 complicated matters.

13 JUDGE SIPPEL: Right.

14 MR. GUSKEY: As far as describing
15 the whys and wherefores of Preferred's
16 participation in the rebanding and how it was
17 treated and not feeling that it was treated
18 fairly and consequently filing an appeal with
19 the District Court that those are very much
20 peripheral to this proceeding.

21 In this proceeding, Mr. Waugh, in
22 the letter that Ms. Singh described, the July

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1 8 letter, Mr. Waugh in reciting or demanding
2 or including the elements of matters related
3 to the rebanding proceedings, the Appeals
4 Court, and requiring, as Ms. Singh described, -
5 other Bureaus within the FCC --

6 JUDGE SIPPEL: Yes.

7 MR. GUSKEY: -- to take action. We
8 were very much taken aback by, by those
9 demands and the corporation would never make
10 those demands because they were clearly
11 outside the purview of this proceeding --

12 JUDGE SIPPEL: All right. Well,
13 that's --

14 MR. GUSKEY: They were ridiculous -

15 --

16 JUDGE SIPPEL: Okay.

17 MR. GUSKEY: -- for, by Mr. Waugh.

18 JUDGE SIPPEL: Okay. I don't want
19 things argumentative if I can avoid them. In
20 other words, you were not associated with that
21 effort on the part of Mr. Waugh to have that,
22 that unrelated brief if I can call it that.

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1 Is that right? I know you said it clearly.

2 Let me go to Mr. Silva now because
3 we want to spend time on this on his side of
4 it. Sir.

5 MR. SILVA: Well, your Honor, I can
6 understand what the Bureau is saying that
7 these, these settlement offers that we were
8 making were -- I'm surprised that Mr. Guskey
9 doesn't agree with them because they obviously
10 will benefit the company.

11 JUDGE SIPPEL: Yes, that's why I
12 was asking that question. I understand that.

13 MR. SILVA: But the point is we
14 weren't asking them to make unlawful ex parte
15 contacts number one. And with regard to the
16 General Counsel's Office and the petition for
17 review that's pending, we were talking about
18 a procedural objection that had been made.

19 And as far as we're concerned,
20 they can ask these other bureaus for that kind
21 of relief and they can say, "Look, we would
22 like to settle this case, can you withdraw

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1 this procedural objection?" I mean I don't
2 think it was quite as outlandish or as
3 outrageous as the Bureau thinks, but the real
4 reason -- why do you keep standing up?

5 JUDGE SIPPEL: You'll be able to
6 reply.

7 MR. SILVA: The real reason the
8 case wasn't settled is the precondition that
9 the Bureau put on it. They said, "If you want
10 to settle and be part of this settlement, Mr.
11 Waugh, you have to forego your claim to this
12 beneficial interest in the company." And it
13 was that way for the, from the very beginning.

14 We tried very hard to, to meet
15 their demands. My client hired an expert in
16 future interest. We tried to draft something
17 that would satisfy everyone, and what it
18 finally came down to, is this letter of July
19 8 where the client basically said, "Why am I
20 jumping through all these hoops? I didn't do
21 anything wrong. Why are they making me do
22 this? Why do I have to forfeit an interest in

1 the company?" And that is really what this
2 letter is all about and I think it's pretty
3 clear if you read the whole thing that that's
4 what we're saying here.

5 JUDGE SIPPEL: I will. I will read
6 it, but this is -- so really, I mean, this was
7 -- all right, all right. I don't have to
8 repeat what you said. You said it very
9 clearly.

10 Now you were -- you wanted to --
11 you got something on your mind about that, Ms.
12 Singh.

13 MS. SINGH: Yes, your Honor.

14 JUDGE SIPPEL: Please.

15 MS. SINGH: I realize that Mr.
16 Waugh's counsel was calling me out for
17 standing up, but that was just a signal to
18 your Honor that I did wish to make a comment
19 on that one point.

20 JUDGE SIPPEL: I understand.

21 MS. SINGH: I'm sure you could see
22 it from my facial expression, but for the

1 record, we're shocked. I'm shocked that he
2 would think that we could just call the Office
3 of General Counsel and discuss that, "Hey,
4 we'd like to settle this case that we're not
5 allowed to talk to you about. And as one of
6 the demands that's part and parcel of that
7 settlement, we'd like for you to withdraw
8 objections, procedural or otherwise. In any
9 case, that you decided is in your full
10 discretion at best interest of the Commission
11 to prosecute."

12 That is out of line. And if I had
13 done that someone could have had my job --

14 MR. SILVA: I'll cite the rule if
15 you give me time. There is an exception to
16 the ex parte rules where you can discuss
17 litigation with the General Counsel's Office.

18 MS. SINGH: Of course.

19 MR. SILVA: And so I don't think
20 we're asking her to do anything unlawful, but,
21 and certainly that wasn't the intention, and
22 that wasn't also the reaction I got either.

1 I mean, but --

2 JUDGE SIPPEL: From who?

3 MR. SILVA: From the Bureau. I
4 mean, I don't, you know, I'm sorry that they
5 misunderstood our request, but it certainly
6 wasn't to make unlawful ex parte contacts.

7 MR. OSHINSKY: That's the way it
8 appears, your Honor.

9 MS. SINGH: That is the way it
10 appeared to the Bureau, your Honor. I'm well
11 aware of the rule that counsel is trying to
12 cite. We cited it ourselves. It's basically
13 an exclusion to the ex parte rules that allow
14 you to discuss some negotiations. We're well
15 aware of that, but our --

16 MR. SILVA: No, that's isn't the
17 rule I'm talking about.

18 MS. SINGH: Oh, I'm sorry.

19 JUDGE SIPPEL: You want to give the
20 rule, cite to the rule, please?

21 MR. SILVA: If you, if you give me
22 some time after the conference, I'll look it

1 up, but it's, it's an exception to the ex
2 parte rule --

3 JUDGE SIPPEL: Okay.

4 MR. SILVA: -- that allows you to
5 speak to the General Counsel's Office about a
6 pending litigation in the court.

7 JUDGE SIPPEL: Okay.

8 MS. SINGH: Your Honor, if I may.
9 I believe that it's Section 1.1204.

10 JUDGE SIPPEL: 1.1204.

11 MS. SINGH: A2.

12 JUDGE SIPPEL: A2?

13 MS. SINGH: Correct.

14 JUDGE SIPPEL: Alpha 2, okay.

15 MS. SINGH: For the record, that
16 says; it's titled, "Exempt Ex Parte
17 Presentations and Proceedings." The
18 presentation is made by or to the General
19 Counsel and his or her staff and concerns
20 judicial review of a matter that has been
21 decided by the Commission.

22 JUDGE SIPPEL: Well, that's -- all

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1 right. Would that -- would that apply as to -
2 - oh, I see, "Exempt Ex Parte Presentation."
3 Would that apply to the situation with the
4 rebanding, I mean, all that, that business
5 going on up there?

6 MS. SINGH: In terms of whether we
7 may talk to them about it, your Honor, that's
8 one thing, but in terms of us suggesting that
9 they actually take a certain action in order
10 to encourage or allow or induce settlement in
11 the incident proceeding, I don't believe
12 that's a suggestion that's palatable, your
13 Honor, both in terms of the practice and
14 procedures that the Enforcement Bureau engages
15 in as a regular part of hearing and settlement
16 procedures, but also under the rules as far as
17 the Bureau reads them.

18 And just to reiterate, we, during
19 that July 8, 2009 conference call that
20 followed the receipt of this letter, we asked
21 Mr. Waugh's counsel whether he would also on
22 top of his other demands like us to buy him

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1 dinner. That's a verbatim quote and that's
2 just to let him know and to let you know, your
3 Honor, that we did convey our shock and
4 surprise at the time that his list was this
5 extensive.

6 We were aware of the ongoing
7 business disputes between the parties, we were
8 aware that Mr. Waugh had been trying to settle
9 the ongoing business disputes with Preferred
10 Communication Systems, Inc. because they
11 pertained to our position on, collectively as
12 to whether any disposition of the voting trust
13 and the stock to be awarded thereto would be
14 included in the settlement, that would be
15 approved by your Honor, but we were trying to
16 negotiate in good faith, your Honor, and we
17 really thought that this reflected that they
18 were not.

19 MR. SILVA: Well, I'd like to
20 address that if I may, your Honor.

21 JUDGE SIPPEL: Wait a minute. Wait
22 a minute. Do you think that they were not

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1 negotiating in good faith because he asked you
2 to go up and talk to General Counsel about
3 this?

4 MS. SINGH:- Because, your Honor,
5 Mr. Waugh asked for the Bureau to make
6 substantive communications on the merits of
7 other proceedings pending before various other
8 offices. Not just the Office of General
9 Counsel, but also before the D.C. Circuit
10 Court of Appeals, also before the Public
11 Safety and Homeland Security Bureau, and also
12 before the Wireless Telecommunications Bureau.

13 JUDGE SIPPEL: All right. Well,
14 the answer to -- I mean, but the answer to --
15 it seems to me, if I'm getting it right from
16 Mr. Silva, the real holdup was the, was the
17 beneficial interest, the equitable interest, -
18 --

19 MR. GUSKEY: Hello, this is --

20 JUDGE SIPPEL: -- the beneficial
21 interest I should say. Yes, let me just
22 finish what I'm going to say.

1 MR. GUSKEY: Okay.

2 JUDGE SIPPEL: As I got from Mr.
3 Silva is that if you insisted upon that it
4 was, that it was out of the question for you
5 go and do those things, for whatever reasons,
6 that he wasn't going to pursue those, that he
7 was only going to pursue, the only thing that
8 was holding it up was the, was the beneficial
9 interest.

10 MS. SINGH: Well, your Honor, the
11 thing is --

12 JUDGE SIPPEL: Am I right? I am
13 saying that right or not?

14 MR. SILVA: Well, your Honor, no, I
15 --

16 JUDGE SIPPEL: I haven't read the
17 letter, so I --

18 MR. SILVA: No, I --

19 JUDGE SIPPEL: Excuse me.

20 MR. SILVA: I didn't quite go that
21 far. I -- what I'm saying is --

22 JUDGE SIPPEL: Well, would you go

1 that far today?

2 MR. SILVA: Would we settle without
3 those --

4 JUDGE SIPPEL: Yes, forget about
5 that. Forget all about that stuff about the
6 General Counsel, the Wireless Bureau. Just,
7 just, you know, cash on the -- not cash on the
8 line, but just, just the beneficial interest.

9 MR. SILVA: I think that, and I
10 assume, that the Bureau thinks it can obtain
11 these waivers. I wasn't here when counsel
12 discussed that.

13 JUDGE SIPPEL: No, no, no, I'm not
14 asking that. I'm not -- we didn't talk about
15 waivers. We didn't talk about that at all.

16 MR. SILVA: Well, I mean that was,
17 that is the one important item as far as Mr.
18 Waugh is concerned. These other items I think
19 would be negotiable.

20 JUDGE SIPPEL: The waiver --

21 MR. SILVA: The construction
22 deadlines --

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1 JUDGE SIPPEL: Oh yes, which,
2 again, we're going -- this is circular
3 discussion about that because that's a, that's
4 an issue in the case that the Wireless Bureau
5 can't act on your request for a waiver until
6 that question of a misrepresentation is
7 resolved.

8 MS. SINGH: Actually, your Honor, -
9 -

10 JUDGE SIPPEL: And in this -- is
11 that right? Am I --

12 MS. SINGH: Actually, your Honor,
13 according to the order to show cause, our
14 understanding is that the discretion on
15 whether and how to act on that waiver request
16 --

17 JUDGE SIPPEL: Yes. .

18 MS. SINGH: -- does reside and
19 remain with the Wireless Communications Bureau
20 during dependence of this proceeding despite
21 that there are issues designating relating to
22 it.

1 JUDGE SIPPEL: But as a practical
2 matter, you're -- well, just based on just the
3 collective experience in here, I don't think
4 that the Wireless Bureau is not going to act
5 on that as long as there's a pending issue
6 against the parties who are asking, or even a
7 party, that's participating, that's requesting
8 the waiver.

9 MS. SINGH: We would hope not, your
10 Honor, but certainly with the Wireless
11 Telecommunications Bureau not in this room nor
12 party to this proceeding, we can't speak for
13 them.

14 JUDGE SIPPEL: No, I know you
15 can't, but you can't expect that they would,
16 right? You can't -- you couldn't, you
17 couldn't expect here sitting here today that
18 they're going to grant the waiver until this
19 is, until this issue, this cloud overhanging
20 the parties and the character, you know, the
21 character issues are resolved.

22 MS. SINGH: It would be our best

1 hope, your Honor, that they would not.

2 MR. GUSKEY: This is Mr. Guskey.
3 Let me just inject something. In the order to
4 show cause, as I recall, it specifically
5 stated that the waiver request was going to be
6 on hold until the EB action, the particular
7 proceeding was resolved. And that is I got
8 punctuated by the fact that in a settlement
9 agreement it provided for the Enforcement
10 Bureau to notify the WTB that any, that the
11 action had been settled and any holds on their
12 proceedings to evaluate the waiver with this.

13 JUDGE SIPPEL: Is that true?

14 MS. SINGH: This is correct, your
15 Honor, and as a matter of practice, in viewing
16 with other licensing bureaus all the time and
17 my other responsibilities at the Enforcement
18 Bureau, I can say that even if you place a
19 hold, sometimes accidents happen, so, of
20 course, we would hope that they would not
21 grant such an application without our
22 releasing that hold. But as a practical

1 matter, could it happen? Yes, it could.

2 JUDGE SIPPEL: But if the -- I
3 don't know, it's not a question of if, the
4 settlement agreement, part of the settlement --
5 agreement is that the Bureau is going to
6 release its hold.

7 MS. SINGH: Yes, your Honor.

8 JUDGE SIPPEL: But -- now, if
9 that's the case then how does that impact your
10 client, Mr. Waugh? If they --

11 MR. SILVA: We're all in favor of
12 that. We're all in favor of that, your Honor.

13 JUDGE SIPPEL: That's what I was
14 thinking.

15 MR. SILVA: Yes.

16 JUDGE SIPPEL: So then what else is
17 left for Mr. Waugh to be concerned about
18 except that he wants to get paid what he's
19 owed.

20 MR. SILVA: That's his primary
21 concern.

22 JUDGE SIPPEL: Well, I'm trying to

1 get it to the point where it's his only
2 concern because this other, this other stuff
3 that we're talking about that's intra-agency
4 is causing a lot of, a lot of-consternation
5 and confusion, and it seems to me -- and if
6 it's not necessary to why we are here today
7 then, you know, I'd like to just forget about
8 it.

9 MR. SILVA: Well, I'm certainly,
10 see if, you know, I'll find out. I mean the,
11 the proposals were not made in a frivolous
12 manner. I mean, they were serious --

13 JUDGE SIPPEL: That's not where --
14 from where I'm sitting here today --

15 MR. SILVA: And they weren't made
16 in bad faith, they were made because we viewed
17 this as something beneficial to the company.

18 JUDGE SIPPEL: I understand that,
19 but that's --

20 MR. SILVA: And we also thought
21 it's something the Bureau could do. We didn't
22 suggest a futile packed or an unlawful act,

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1 but our real concern and the real reason the
2 case hasn't been settled is this condition
3 that was placed on us. And I think if that
4 condition were removed, these other matters
5 might very well be resolved without any
6 further consideration of them.

7 JUDGE SIPPEL: Well, let me ask
8 this question then. If, if Mr. Silva's
9 client, Mr. Waugh, drops everything else in
10 the, in the July 8 letter and simply wants to
11 negotiate with Mr. Austin and Mr. Guskey about
12 the compensation package, that's really what
13 we're talking about, would the Bureau give
14 them a period -- would be willing to give them
15 a period of time to do that, or does the
16 Bureau want to be involved in that
17 negotiation?

18 MS. SINGH: Your Honor, --

19 JUDGE SIPPEL: You've got to -- I'm
20 sorry. You would have to approve it obviously
21 to be sure that you're, you're satisfied that
22 the, that this voting trust and everything

1 else is tight enough so that he's not going to
2 wiggle out from under it.

3 I can understand that, but as far
4 as the principle of him getting compensation
5 for a ten-year claim that he's had and, which
6 would then eliminate any objection to the
7 settlement, making it a universal settlement
8 subject to your approval of the, you know, how
9 it's going to be structured and set up.

10 MS. SINGH: Your Honor, --

11 JUDGE SIPPEL: Would that be, would
12 that be a waste of time or would that be a
13 good use of time?

14 MS. SINGH: It depends, your Honor.
15 Let me just explain --

16 JUDGE SIPPEL: Go ahead, I'm sorry.

17 MS. SINGH: -- where we're coming
18 from.

19 JUDGE SIPPEL: You've been very
20 patient. Go ahead.

21 MS. SINGH: Thank you, your Honor.
22 The settlement agreement negotiations that